

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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CESAR POWERS,

Petitioner,

v.

WARDEN BOBBY,

Respondent.  
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CASE NO. 1:08-CV-0505

OPINION & ORDER  
[Resolving Doc. No. [28](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Petitioner Cesar Powers ostensibly moves this Court to reconsider its previous Opinion and Order denying the Petitioner's Rule 60(b)(6) motion for relief from judgment and Rule 12(f) motion to strike. [[Doc. 28.](#)] However, because the Petitioner's motion ultimately asks this Court to reconsider the grounds of the Sixth Circuit's order affirming the denial of Powers's habeas petition, this Court **DENIES** Powers's motion for lack of jurisdiction.

On February 28, 2009, this Court denied Powers's petition for habeas relief under [28 U.S.C. § 2254](#). [[Doc. 16.](#)] In dismissing Powers's petition, this Court confirmed the state appellate and supreme courts' findings that *res judicata* procedurally barred the Petitioner's ineffective assistance of counsel claim. The Sixth Circuit affirmed, finding that the state courts' decision did not involve unreasonable application of clearly established federal law. The Sixth Circuit also found that Powers had procedurally defaulted his defective indictment and ineffective assistance of counsel claims, and

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had forfeited his Double Jeopardy claim by failing to raise it on appeal. [[Doc. 20](#); [Doc. 21](#).] On May 13, 2010, Powers filed a Rule 60(b)(6) for relief from judgment and a Rule 12(f) motion to strike Respondent Bobby's opposition to the 60(b)(6) motion. [[Doc. 22](#).] This Court denied that motion. [[Doc. 27](#).]

On October 22, 2010, Petitioner Powers filed the instant motion for reconsideration. Powers challenges the application of *res judicata* and procedural default to preclude his ineffective assistance of trial and appellate counsel claims. Powers also asserts that his conviction on two counts against him, following dismissal of two other counts, placed him in double jeopardy. [[Doc. 28](#).]

Because Powers's arguments ultimately challenge the Sixth Circuit's order, this Court does not have jurisdiction to consider his motion.

Moreover, to the extent that any part of Powers's motion asks this Court only to reconsider its Opinion and Order denying Powers's Rule 60(b)(6) motion for relief from judgment, the Court finds that the Petitioner merely repeats arguments already made to this Court. A court may grant a motion to amend or alter judgment if a clear error of law or newly discovered evidence exists, an intervening change in controlling law occurs, or to prevent manifest injustice. See [Gencorp, Inc. v. Am. Int'l Underwriters](#), 178 F.3d 804, 834 (6th Cir. 1999). However, "[i]t is not the function of a motion to reconsider either to renew arguments already considered and rejected by a court or 'to proffer a new legal theory or new evidence to support a prior argument when the legal theory or argument could, with due diligence, have been discovered and offered during the initial consideration of the issue.'" [McConocha v. Blue Cross & Blue Shield Mut. of Ohio](#), 930 F. Supp. 1182, 1184 (N.D. Ohio 1996) (quoting [In re August 1993 Regular Grand Jury](#), 854 F. Supp. 1403,

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1408 (S.D. Ind. 1994)).

For the foregoing reasons, the Court **DENIES** the Petitioner's motion for reconsideration.

IT IS SO ORDERED.

Dated: November 19, 2010

s/ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE